

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

MARY A. RICHMOND, : Case No. 05-22000T
Debtor(s)

:

:

ORDER

AND NOW, this 11th day of August, 2005, it is ORDERED that Debtor's motion to avoid the judicial lien held by Dell & Bartlow is GRANTED as the court finds that: (1) Del & Bartlow's judicial lien impairs an exemption to which Debtor would have been entitled under 11 U.S.C. §522(b), see 11 U.S.C. §522(f)(1); Collier on Bankruptcy, 15th Ed. Rev., ¶522.11[3] at 522-81 (where the debtor is seeking to avoid a junior judicial lien, and the consensual liens on the property equal or exceed the fair market value of the property, such that the debtor has no equity in the property, nonetheless, the debtor can still avoid the junior judicial lien, citing 140 Cong. Rec. at H10,769 (daily ed. Oct. 4, 1994); and (2) a debtor's right to exempt property survives the debtor's death, see Fed. R. Bankr. P. 1016; Bernstein v. Pavich (In re Pavich), 191 B.R. 838, 846 (Bankr. E.D. Cal. 1996); see also Collier on Bankruptcy, ¶1016.02 at 1016-2 - 1016-3 ("Once the [bankruptcy] estate is created, no interests in property of the estate remain in the debtor. Consequently, if the debtor dies during the case, only property exempted from property of the estate or acquired by the debtor after the commencement of the case and not included in property of the estate will be available to the representative of the debtor's probate estate. The bankruptcy proceeding will continue in rem with respect to property of the state [sic], and the discharge will

apply in personam to relieve the debtor, and his probate representative, of liability for dischargeable debts, citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 367-68; S. Rep. No. 989, 95th Cong., 2d Sess. 82-83 (1978)).

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge